

Consent Decree 7:16-cv-00462-GEC
United States, et. al. vs. Southern Coal Corporation & Affiliates
Quarterly Report for period ending March 31, 2018
On behalf of Southern Coal Corporation & Affiliates

As per the Consent Decree between the United States of America, the State of Alabama, the Attorney General of Alabama, Alabama Department of Environmental Management, the Commonwealth of Kentucky, Energy and Environment Cabinet, the State of Tennessee, the Attorney General and Reporter of Tennessee, and the Commonwealth of Virginia, and Southern Coal Corporation, Justice Coal of Alabama, LLC, A & G Coal Corporation, Four Star Resources LLC, Infinity Energy, Inc., Kentucky Fuel Corporation, Sequoia Energy, LLC, Virginia Fuel Corporation, National Coal, LLC, Premium Coal Company, Incorporated, S and H Mining Inc., Airway Resources, L.L.C., Baden Reclamation Company, Black River Coal, LLC, Chestnut Land Holdings, LLC, Meg-Lynn Land Company, Inc., Nine Mile Mining, Inc., Cane Patch Mining Co., Inc., Bluestone Resources, Inc., Dynamic Energy, Inc., Greenthorn, LLC, Justice Highwall Mining Inc., National Resources, Inc., Nufac Mining Company, Inc., Pay Car Mining, Inc., Second Sterling Corp., and Newgate Development of Beckley LLC, the following quarterly report is provided (capitalized terms herein shall have the meanings ascribed to them in the Consent Decree):.

A. Information Regarding Any CWA Violation

(i) Summary of Effluent Limit Violations for 1st quarter 2018

- There were one hundred and seventy-two (102) Effluent Limit Violations on the associated NPDES permits for the facilities. These violations consisted of one hundred and five (105) Daily Violations and sixty-seven (67) Monthly Violations. Thirty-nine (39) of the Daily Violations were in-compliance in under 72 hours and did not result in category violations. Forty-one (41) of the Daily Violations were Category 1 violations, and twenty-five (25) were Category 2 violations. Forty-eight (48) of the Monthly Violations were Category 1 violations, and there were nineteen (19) Category 2 violations. See **Table 1**.
- There was forty-two (42) Outlet with consecutive Effluent Limit Violations of the same pollutant parameter. See **Table 1**.
- There was eight (8) Outlet with Persistent Noncompliance Issues (three (3) or more Effluent Limit Violations of the same parameter in the preceding 12-month period). See **Table 2**.

(ii) Summary of Failure to Sample Violations for 1st quarter 2018

- There were no Failure to Sample Events that occurred in 1st quarter 2018.

- In the 4th quarter 2017 Quarterly Report there were four (4) Failure to Sample Violations (1 Category 1, and 3 Category 2 violations) reported that did not occur. Following submission of that quarterly report the sample data was found and submitted according to the requirements of the NPDES permit. As a result, eleven thousand dollars (\$11,000) in stipulated penalties were paid towards Kentucky stipulated penalties that were not owed. A credit equal to this amount will be applied to Kentucky stipulated penalties with this 1st quarter 2018 Quarterly Report. See **Table 1**.

Stipulated Penalty Summary - 1st Quarter 2018							
Type	Total #	Total # of Same Consecutive Exceedance	Total # of 3+ of Same Exceedance in Preceding 12 Month Period	Total # of Category 1 Violations	Total # of Category 2 Violations	Associated Stipulated Penalty	Additional Penalty for Persistent Non-Compliance
Daily Violation	105	25		41	25	\$ 190,000.00	\$ -
Monthly Violation	67	17	8	48	19	\$ 229,500.00	\$ 16,000.00
Quarterly Violation						\$ -	\$ -
Failure to Sample			N/A			\$ -	N/A
Total Violations	172	42	8	89	44	\$	435,500.00
Stipulated Penalties - Accrued Daily							
Non-Compliance with Consent Decree 1st quarter 2018							
1st - 14th day	01/01/18	01/02/18	2	\$ 2,000.00	Laboratories withheld data from database. Per section VII, paragraph 49 of the Consent Decree all laboratories must provide electronic transmittal of all DMR Sample results to the Database within 48 hours of completion of analysis.		
15th - 30th day	01/03/18	01/15/18	13	\$ 32,500.00			
1st - 14th day	01/25/18	01/25/18	1	\$ 1,000.00			
1st - 14th day	02/12/18	02/12/18	1	\$ 1,000.00			
1st - 14th day	03/07/18	03/20/18	14	\$ 14,000.00			
15th - 30th day	03/21/18	03/25/18	5	\$ 12,500.00			
1st - 14th day	03/30/18	03/31/18	2	\$ 2,000.00			
Total Non-Compliance with Consent Decree			38	\$	65,000.00		
Total Stipulated Penalties 1st Quarter 2018:						\$	500,500.00
Credit from 4th Quarter 2017 Overpaid Failure to Sample Stipulated Penalties						\$	(11,000.00)
Total Stipulated Penalties Due for 1st Quarter 2018:						\$	489,500.00

*For the purposes of this document, a blank cell represents 0 violations.

Table 1.

Outlets with Persistent Non-Compliance - 1st Quarter 2018									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Limit	Result	Type	Category
WV1018965	S400900	002	02/27/18	03/08/18	Total Aluminum	0.0800	0.1254	Monthly	1
Exceedances from Preceding 12 Months									
WV1018965	S400900	002	07/19/17	08/03/17	Total Aluminum	0.0800	0.3968	Monthly	1
WV1018965	S400900	002	04/30/17	05/08/17	Total Aluminum	0.0800	0.1041	Monthly	1
WV1018965	S400900	002	12/29/16	01/06/17	Total Aluminum	0.0800	0.0808	Monthly	1
Outlets with Persistent Non-Compliance - 1st Quarter 2018									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Limit	Result	Type	Category
WV1026488	S301411	007	01/30/18	02/08/18	Total Aluminum	0.0800	0.1375	Monthly	1
WV1026488	S301411	007	02/21/18	03/08/18	Total Aluminum	0.0800	0.1680	Monthly	2
WV1026488	S301411	007	03/29/18	04/09/18	Total Aluminum	0.0800	0.0870	Monthly	2
Exceedances from Preceding 12 Months									
WV1026488	S301411	007	08/17/17	09/08/17	Total Aluminum	0.0800	0.1670	Monthly	1
WV1026488	S301411	007	05/31/17	06/09/17	Total Aluminum	0.0800	0.0902	Monthly	1
WV1026488	S301411	007	02/28/17	03/08/17	Total Aluminum	0.0800	0.1813	Monthly	2
WV1026488	S301411	007	01/26/17	02/08/17	Total Aluminum	0.0800	0.1040	Monthly	1
Outlets with Persistent Non-Compliance - 1st Quarter 2018									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Limit	Result	Type	Category
WV1018965	S400900	007	02/27/18	03/08/18	Total Aluminum	0.0800	0.0930	Monthly	1
Exceedances from Preceding 12 Months									
WV1018965	S400900	007	07/19/17	08/03/17	Total Aluminum	0.3158	0.0800	Monthly	1
WV1018965	S400900	007	01/31/17	02/08/17	Total Aluminum	0.1224	0.0800	Monthly	2
WV1018965	S400900	007	12/30/16	01/06/17	Total Aluminum	0.1126	0.0800	Monthly	1
Outlets with Persistent Non-Compliance - 1st Quarter 2018									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Limit	Result	Type	Category
WV1026488	S301411	007	01/30/18	02/08/18	Total Aluminum	0.0800	0.1375	Monthly	1
WV1026488	S301411	007	02/21/18	03/08/18	Total Aluminum	0.0800	0.1680	Monthly	2
WV1026488	S301411	007	03/29/18	04/09/18	Total Aluminum	0.0800	0.0870	Monthly	2
Exceedances from Preceding 12 Months									
WV1026488	S301411	007	08/17/17	09/08/17	Total Aluminum	0.0800	0.1670	Monthly	1
WV1026488	S301411	007	05/31/17	06/09/17	Total Aluminum	0.0800	0.0902	Monthly	1
WV1026488	S301411	007	02/28/17	03/08/17	Total Aluminum	0.0800	0.1813	Monthly	2
WV1026488	S301411	007	01/26/17	02/08/17	Total Aluminum	0.0800	0.1040	Monthly	1

Table 2.

(iii) Summary of Stipulated Penalties

- The total amount of Stipulated Penalties owed for the period is four hundred and eighty-nine thousand and five hundred dollars (\$489,500.00). See **Table 1**.

(iv) Summary of Additional CWA/SMCRA Violations

- See **Attachment A.** For more details.

(v) Summary of Remedial Steps Taken or Planned for Violations in (i) and (ii) above

During the period, the following remedial actions were initiated to address the Effluent Limit Violations identified above:

- Daily monitoring began the date of the Violation notification.
- The pond associated with the Outlet was cleaned.
- Treatment was applied as needed.
- The Outlet was brought back into compliance.
- See **Attachment B.** and **Attachment C.** for details specific to each effluent limit violation.

During the period, the following remedial actions were initiated to address the Failure to Sample Violations identified above:

- The laboratory was made aware of missed samples and active status of site that was failed to sample. The NPDES permit and reporting and monitoring requirements were reviewed with laboratory to prevent re-occurrence of failure to sample events.

During the period, the following remedial actions were initiated to address the Persistent Non-compliances identified above:

- Daily monitoring began the date of the Violation notification.
- In process of consulting with CWA compliance and treatment systems expert.
- See **Table 2.** For details specific to each persistent non-compliance.

During the period, the following remedial actions were initiated to address the CWA/SMCRA Violations:

- See **Attachment A.** for specific violations and remedial actions taken.

(vi) Copy of the Violation Database Entries for the relevant quarter

- See **Attachment A.** for 1st quarter 2018 CWA/SMCRA Violations
- See **Attachment B.** for 1st quarter 2018 Effluent Limit Violations
- See **Attachment C.** for responses to 1st quarter 2018 Effluent Limit Violations

- See **Attachment D** for 09/30/17 – 09/30/18 Effluent Limit and Failure to Sample Violations
- Copies of All Violation Documents (CWA/SMCRA, Effluent Limit, and Failure to Sample) and Completed Environmental Audits and Treatment System Audits are located on the publicly available database for Southern Coal Corporation.
 - www.southerncoalcorporation.droppages.com

B. Summary of Incomplete Audit Responses

- No Incomplete Audit Responses occurred 1st quarter 2018.
- The EMS Audit Response and Action Plan was completed and submitted with the 4th quarter 2017 quarterly report. EPA's comments on EMS Audit Response and Action Plan have not yet been received. Once EPA comments are received, a response will be submitted within 30 days from receipt date.

C. Documentation of Training Sessions Pursuant to Paragraph 60

- Annual Consent Decree Training & Annual EMS Procedure Training will be conducted in 2nd quarter 2018.

D. Certification of Material Conformance

I hereby certify that activities at Southern Coal Corporation and Affiliates facilities are in material conformance with the elements of the approved EMS manual relating to the Applicable Law addressed by the Consent Decree.

E. Status of Consent Decree Implementation

See **Attachment E**. SCC Consent Decree Obligation Tracking

F. Other Non-Compliances with This Consent Decree

- There were seven (7) instances of Non-Compliance with Consent Decree that occurred for a combined total of thirty-eight (38) days during 1st quarter 2018. Please see **Table 1** for the associated stipulated penalties. Effluent Water Data was not submitted electronically by contracted laboratories to Southern Coal Corporation within 48 hours of completion of analysis during the following dates:
 - January 1, 2018 – January 2, 2018 (2 Days of Non-Compliance with Consent Decree in 1st-14th day penalty range)
 - January 3, 2018 – January 15, 2018 (13 Days of Non-Compliance with Consent Decree in 15th-30th day penalty range)
 - January 25, 2018 – January 25, 2018 (1 Day of Non-Compliance with Consent Decree in 1st-14th day penalty range)]

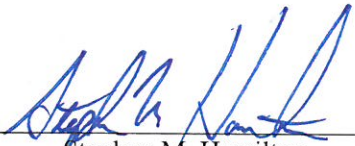
- February 12, 2018 – February 12, 2018 (1 Day of Non-Compliance with Consent Decree in 1st -14th day penalty range)
 - March 7, 2018 – March 20, 2018 (14 Days of Non-Compliance with Consent Decree in 1st -14th day penalty range)
 - March 21, 2018 – March 25, 2018 (5 Days of Non-Compliance with Consent Decree in 15th -30th day penalty range)
 - March 30, 2018 – March 31, 2018 (2 Days of Non-Compliance with Consent Decree in 1st -14th day penalty range)
- No Instances of Non-Compliance with Reporting Requirements
 - No Instances of Non-Compliance with Outlet Inspection Requirements

G. Decree Violation Subject to an Unresolved Force Majeure Claim

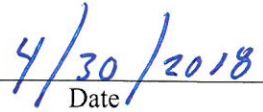
Not applicable.

H. Certification Pursuant to Paragraph 79

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



 Stephen M. Hamilton
 Director of Water Quality



 Date